Supreme Court, U. S.
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NO. 77-800

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

OUACHITA NATIONAL BANK IN MONROE,
PETITIONER

V.

A. L. ROWAN, ET AL,
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF LOUISIANA

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 103,465

THE OUACHITA NATIONAL BANK
IN MONROE
Petitioner,

VS.

A. L. ROWAN, ET AL
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Petitioner, The Ouachita National Bank in Monroe, respectfully prays that a writ of certiorari issue to review the denial of writ of certiorari by the Supreme Court of the State of Louisiana, entered in this proceeding on September 6, 1977.

OPINIONS BELOW

The denial of the writ of certiorari by the Supreme Court of the State of

Louisiana, reported at 349 So.2d 332 (La., 1977) appears in Appendix I hereto. The opinion of the Second Circuit Court of Appeal, State of Louisiana, reported at 345 So.2d 1014 (2nd Cir., 1977) is included in Appendix II. The opinion of the Fourth District Court, Parish of Ouachita, State of Louisiana, is included in Appendix III.

JURISDICTION

The denial of the writ of certiorari by the Supreme Court of the State of Louisiana was entered on September 6, 1977 and this petition for certiorari is filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

Whether the application of the increased homestead exemption of $ 15,000.00 to a pre-existing obligation is an impairment of contract and prohibited by Article I, Section 10 of the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Article I, Section 10, Clause 1 :

> "No State shall enter into any Treaty, Alliance, or Confederation; grant letters of Marque and Reprisal; coin money; emit Bills of Credit; make anything but gold and silver coin a tender in Payment of Debts; pass any Bill of Attainder, ex post facto law, or law impairing the Obligations of Contracts, or grant any title of Nobility."

STATEMENT OF THE CASE

This case present serious Constitutional issues involving the Constitution of the United States. It presents an issue which has been decided by the Honorable Court of Appeals for the Second Circuit of the State of Louisiana in a manner contrary to the existing decisions of this Court, and the decisions of the Supreme Court of Louisiana. It involves at the onset the very serious question of whether the impairment of contract clause of the United States Constitution is to be interpreted narrowly in the traditional sense giving full import to the plain language of the clause, or is rather to be interpreted on a so-called balance of interests theory such as we find in the Fourteenth Amendment. The Court of Appeals elected for a balance approach to the contract clause. We believe that the basic approach is error.

The case presents no factual dispute. Prior to the adoption of the Constitution of 1974, and at a time when the homestead exemption as provided in the Constitution of 1921 was $ 4,000.00, respondent incurred a contractual obligation to pay money to petitioner. Subsequent to the adoption of the Constitution of 1974, which increased the homestead exemption to $ 15,000.00, petitioner took judgment against respondent and seized his home under a writ of fieri facias. Respondent timely asserted his homestead exemption by intervention and petitioner , in its answer, opposed recognition of the full $ 15,000.00 based on the impairment of contract clause in the United States Constitution (see page 71 of the record). The trial court allowed an exemption in accordance with the 1974 Constitution, and not in accordance with the constitution and laws which governed the contract at the time of its confection (see pages 126-131 of the record). Petitioner appealed, urging that to apply the increased homestead exemption was an impairment of contract prohibited by the Federal Constitution, (see Specification of Errors, page 3 of Appellant's brief). The Second Circuit Court of Appeals affirmed. Re-hearing was timely applied for and denied. Petitioner sought certiorari and review by the Louisiana Supreme Court, assigning as error the holding by the Court of Appeals

that the application of the $ 15,000.00 homestead exemption amount to a pre-existing obligation is not an impairment of contract and therefore not violative of Article I, Section 10 of the United States Constitution, as well as Article 14, Section 25 of the 1974 Louisiana Constitution. The Louisiana Supreme Court denied petitioner's writ of certiorari, stating that the result of the Court of Appeals decision was correct. Petitioner seeks certiorari by this Honorable Court. Since the Louisiana Supreme Court denied writs in this case, the operative opinion is that of the Second Circuit Court of Appeals for the State of Louisiana, and this opinion will be the source of continual reference.

REASON FOR GRANTING THE WRIT

Article I, Section 10 of the United States Constitution provides that "... no state shall...pass any...law impairing the obligation of contracts...". That the obligations of this contract are impaired becomes obvious when it is recognized that because of the Court of Appeals' interpretation of the provisions of the Louisiana Constitution of 1974, this creditor will be unable to collect $ 11,000.00 of the contractual debt. The Court of Appeals held that this was a permissible impairment of the obligations of contract. In so doing, it held contrary to the decisions of this

Court, to the decisions of the Supreme Court of Louisiana, and insofar as counsel can find, the decisions of the Courts of every state that has reviewed the problem. See Edwards v. Kearzey, 96 U.S. 595, 24 L. Ed 793 (1878); Bank of Minden v. Clement, 65 L.Ed 857, 256 U.S. 126 (1921); Gunn v. Barry, 21 L.Ed 212, 82 U.S. 610 (1873); Daniel v. Thigpen, 194 So. 6 (La., 1940); Rauer's Collection Company, Inc. v. Higgins, 196 Pac.2d 803 (Cal., 1948); Ohio Casualty Insurance Company v. Holz and Holz, Inc., 129 N.W. 2d 330 (Wis., 1964); Hannun v. McInturf, 65 Tenn. 225 (Tenn., 1873); and Wilson v. Brown, 58 Ala. 62 (Ala., 1877).

The Court of Appeals placed its chief reliance upon the case of El Paso v. Simmons, 379 U.S. 497, 85 S.Ct. 577; 13 L.Ed 2d 446 (1965), and quoted extensively from that case. The El Paso case is simply a restatement of a 1934 case of this Honorable Court, Home Building and Loan Association v. Blaisdell, 290 U.S. 398, 54 S.Ct. 231, 78 L.Ed 413 (1934). Blaisdell did announce a balancing approach to the contract clause of the Constitution. And El Paso did expand upon that balancing approach. The essence of the decisions was that every contract is subject to the police power of the State and where reasonably applied, may somewhat modify the obligations of contract. Neither case goes

so far as to make a contract for the payment of money less collectible. We further point out that the rationale of Blaisdell was not adopted by the Louisiana Supreme Court in the subsequent decision of Daniel v. Thigpen (supra). The import of Blaisdell and El Paso is that they impose upon the strict language of Article I, Section 10 qualifications and suggest that contracts can, indeed, be impaired notwithstanding the plain language of the Constitution. The impairment to be allowed must somehow be a reasonable impairment and to get to the question of reasonableness, you balance the interest of the state against the interest of its people to be secure in its contract. And that is what has been done in this case. The Courts somehow came to the conclusion that the interest of the state in allowing the homestead exemption of $ 15,000.00 was of greater importance than the interest of the people to be secure in knowing that a contract once entered into would not be impaired by a stroke of the legislative pen or the whimsy of the people. We believe that the whole balancing approach is in error, but if an argument were to be made, one could very well conclude that the security of contracts, that contracts entered into would not be impaired, and that debts incurred would be paid are more important interests both to the state and its people than is the homestead exemption.

We respectfully submit that such matters are matters of philosophy and not of law, and that the contract clause exists so that nobody would ever have to decide philosophically whether one is more benefited by one thing or another.

We do not want to unjustly characterize the Court of Appeals' decision by characterizing it as a balancing decision. In actuality, although the Court devoted the bulk of its opinion to a discussion of the balancing cases, its actual holding was as found at page 5 of its opinion:

"The bank had no vested interest in the homestead of its debtor at least until it obtained its judgment and recorded it in the mortgage records, and we are not convinced that the debtor's contract with the bank was 'impaired' by the increase in the homestead exemption."

But, it also said at page 6 of its opinion :

"... but even should our finding be otherwise, we also would find'the economic interest of the state... to justify the continuing dominant protective power notwithstanding interference with contracts.'"

Thus, it appears that the balancing of the economic interests of the state against the security of contracts of its citizens is actually a make weight position by the

Court because it had actually held that until a judgment is entered, there is no vested interest in a contract. The Court went on to dismiss without discussion all of the cases cited by petitioner.

The question of whether judgment has to be entered in order to give a contractual creditor an interest sufficient that it cannot be divested because of the impairment clause of the United States Constitution was directly treated by this Honorable Court in Edwards v. Kearzey (supra). It was held in that case that contracts not reduced to judgment were substantially impaired when the exemption in question was materially increased. Edwards v. Kearzey dealt with a state constitutional provision that created a new exemption of personality up to $ 500.00 and of homestead up to $ 1,000.00, whereas the law in force when the debts were contracted exempted only enumerated articles of inconsiderable value and other property not to exceed in value $ 50.00 and land not to exceed $ 500.00 in value. This Court announced the following rule :

"The remedy subsisting in a state when and where a contract is made and is to be performed is a part of the obligation and any subsequent law of the state which so affects the remedy as substantially to impair and lessen the value of the contract is forbidden by the

Constitution and is therefore void". Edwards v. Kearzey, 24 L.Ed. at page 799. The reason for not requiring the debt reduced to judgment was simple :

"The obligation of a contract includes every thing within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it, the contract as such in the view of the law ceases to be and falls into the class of those imperfect obligations as they are termed which depend for their fulfillment upon the will and conscience of those upon whom they rest." Edwards v. Kearzey, 24 L.Ed. at page 796.

In the case at bar, the homestead exemption has been increased almost four times the previous amount, to $ 15,000.00. This very definitely satisfies the "material increase test" laid down in Edwards v. Kearzey and Gunn v. Barry, (supra). Both of these cases are still viable law and have been cited innumerably for the very proposition that petitioner is requesting this Honorable Court to again recognize. Edwards v. Kearzey was cited with approval by the Louisiana Supreme Court in the case Daniel v. Thigpen (supra) in 1940 and we believe ought to be dispositive of the issue. It is simply

not the law, and has never been the law, that whether or not the contractual obligation is reduced to judgment has any significance whatsoever to the determination.

We respectfully submit that the holding of the Court of Appeals that a judgment must be entered before a contract right is vested is simply not in accord with any decision of this Court or of any other court. We further respectfully submit that the Court of Appeals' view of the latitude allowed in the impairment of the contract goes far beyond anything ever done before. The Blaisdell case, which is the real touchstone of the Court's opinion, simply held that the postponement of foreclosure upon the payment of reasonable compensation to the creditor was a permissible impairment. Since a contract right is property which can be taken by the state upon reasonable compensation, we have to agree with Blaisdell that upon reasonable compensation, the enforcement of the contract can be postponed. But Blaisdell means nothing more than this, and a mere reading of the case will demonstrate it. The El Paso case dealt with state lands and contracts for the purchase thereof. The contract there involved was a contract with the state, and the state having passed laws authorizing the contract, was found to have the authority

to modify those laws in its own interest. We believe that El Paso is wrong for the reasons given in Justice Black's dissent, but right or wrong, it is not authority for the position of the Court of Appeals in this case.

CONCLUSION

For the reasons stated above, a writ of certiorari should issue to review the judgment of the Louisiana State Supreme Court.

Respectfully Submitted,

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Attorneys for Petitioner

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

OUACHITA NATIONAL BANK IN MONROE,
Petitioner

V.

A. L. ROWAN, ET AL,
Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of December, 1977, three copies of the Petition for Writ of Certiorari was mailed, postage prepaid, to Mr. George B. Dean, Jr., 1401 Royal Avenue, Monroe, Louisiana 71201. I further certify that all parties required to be served have been served.

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APPENDIX

Appendix

Appendix I - Opinion of the Supreme Court of Louisiana..... A1

Appendix II - Opinion of the Court of Appeal of Louisiana, Second Circuit A2

Appendix III - Opinion of the Fourth Judicial District Court, Parish of Ouachita, State of Louisiana.....A13

APPENDIX I

OUACHITA NATIONAL BANK
IN MONROE

v.

A. L. ROWAN et al.

No. 60105.

Supreme Court of Louisiana.

Sept. 6, 1977.

In re: Ouachita National Bank applying for certiorari, or writ of review, to the Court of Appeal, Second Circuit, Parish of Ouachita.

Writ denied. The result is correct.

A2

APPENDIX II

OUACHITA NATIONAL BANK IN MONROE,
Plaintiff-Appellant,

v.

A. L. ROWAN et al.,
Defendants-Appellees.

No. 13235.

Court of Appeal of Louisiana,
Second Circuit.

April 25, 1977.

Rehearing Denied May 23, 1977.

Appeal from the Fourth Judicial District Court, Parish of Ouachita, State of Louisiana.

Before PRICE, MARVIN and JONES, JJ.

MARVIN, Judge.

The principal issue is whether the increased homestead exemption in the 1974 Louisiana Constitution impairs the obligation of contracts of indebtedness which preexisted the constitution, but which were reduced to judgment and executed after the constitution became effective. [1]

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1. Art. XI, § 1, La. Const. 1921, provided a homestead exemption to the value of

The lower court allowed the increased exemption to the judgment debtor ($15,000) and the judgment creditor (Bank) appeals. We affirm.

As a preliminary issue, the Bank contends the existence of encumbrances in this case which contain homestead waivers and which are superior to the Bank's judgment, entirely exhaust or deplete the homestead (in whatever amount), and therefore, nothing should have been allowed the homestead claimant by the lower court. In effect, the Bank would have us reduce the total indebtedness owed to creditors who enjoy homestead waivers by the amount of the homestead. Thus, under this approach the proceeds of the sale would not benefit the homestead claimant unless the total indebtedness of creditors with homestead waivers was less than the amount of the homestead.

The law favors and has designed an approach, however, for the protection of the homestead.[2] Under the correct approach,

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$2,000, which was increased by amendment in 1938 to $4,000. The 1974 Constitution, Art. XII, § 9; Art. XIV, § 34, which increased the homestead exemption to $15,000, became effective January 1, 1975.

2. In Barlow v. Estate of Carr, 292 So. 2d (La. App. 2d Cir. 1974), we recognized:

the homestead claimant is recognized as a creditor with other claimants to the proceeds of a judicial sale and all claimants are paid according to their respective ranking after payment of costs.

[1] If the ranking creditor enjoys a homestead waiver, the proceeds available are subject to his claim and the amount of the homestead is not deducted or taken into consideration. If at the time his claim is considered according to rank, the creditor does not enjoy a homestead waiver, the homestead claimant legally outranks him and the amount of the homestead is deducted from the proceeds which are available to satisfy his claim. Thus, the homestead claim is ranked above the claim of a creditor who does not enjoy a homestead waiver. Under this application, the purpose of the homestead exemption is fulfilled instead of frustrated. See: LSA Const. 1974, Art. XII, § 9; LSA Const. 1921, Art. XI, § 1; Vol.

"The whole theory of the exemption of the homestead is that the obligation of the debtor to those whom he owes the duty to support is a higher obligation than the payment of his debts. The purpose of the framers of the law was to secure a home beyond the reach of financial misfortune, around which gather the affections of the family; the greatest incentive to virtue, honor, and industry. Hebert v. Mayer, 48 La. Ann. 938, 20 So. 170."

XXXVII, Transcript of Constitutional Convention, January 10, 1974, pp. 38 - 44; Engstrom's of Alexandria, Inc. v. Vaughn, 138 So. 2d 672 (La. App. 3rd Cir. 1962); State v. Code, 215 La. 485, 41 So. 2d 62 (1949); Consolidation Credit Corp. of Baton Rouge v. Forkner, 219 So. 2d 213 (La. App. 1st Cir. 1969); Barlow v. Estate of Carr, supra.

While earlier judicial pronouncements lend support to the contentions of the Bank, the latest cases of the United States Supreme Court and the Louisiana Supreme Court are to the contrary.[3] Earlier cases held that if a remedy formerly available to enforce a contract was abrogated or substantially affected by state action, then the contract itself was impaired.[4] Art. I, § 10, U. S. Const.; Art. XIV, § 23, La. Const. 1974. Courts then began to concern themselves with fine distinctions between remedy and obligation until the second half of this century.

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3. See City of El Paso v. Simmons, 379 U. S. 497, 85 S. Ct. 577, 13 L. Ed. 2d 446 (1965) and Hooter v. Wilson, 273 So. 2d 516 (La., 1973).

4. Edwards v. Kearzey, 96 U. S. 595, 24 L. Ed. 793 (1878); Waggoner v. Flack, 188 U. S. 595, 23 S. Ct. 345, 47 L. Ed. 609 (1903); Bank of Minden v. Clement, 256 U. S. 126, 41 S. Ct. 408, 65 L. Ed. 857 (1921).

In Simmons, the U. S. Supreme Court summarized the development of the law in this language:

"The City [of El Paso] seeks to bring this case within the long line of cases recognizing a distinction between contract obligations and remedy and permitting a modification of the remedy as long as there is no substantial impairment of the value of the obligation. [Citations omitted]

* * * * * *

"We do not pause . . . to chart again the dividing line under federal law between 'remedy' and 'obligation'. . For it is not every modification of a contractual promise that impairs the obligation of contract under federal law, any more than it is every alteration of existing remedies that violates the Contract Clause. [Citations omitted] . . . "

"The decisions 'put it beyond question that the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula, ' as Chief Justice Hughes said in Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398, 428, 54 S. Ct. 231, 236 [78 L. Ed. 413]. The Blaisdell opinion, which amounted to a comprehensive restatement of the principles underlying the application of the Contract Clause, makes it quite clear that '[n]ot only is the constitutional provision qualified

by the measure of control which the state retains over remedial processes, but the state also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end "has the result of modifying or abrogating contracts already in effect." [Citations omitted] Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order * * * This principle of harmonizing the constitutional prohibition with the necessary residuum of state power has had progressive recognition in the decisions of this Court.' [Citations omitted] Moreover, the economic interests of the state may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts.' [Citations omitted] The State has the 'sovereign right * * to protect the * * * general welfare of the people * * *. Once we are in this domain of the reserve power of a State we must respect the "wide discretion on the part of the legislature in determining what is and what is not necessary." ' [Citations omitted] As Mr. Justice Johnson said in Ogden v. Saunders, [12 Wheat 213, 6 L. Ed. 606] '[i]t is the motive, the policy, the object, that must characterize the legislative act, to affect it with the imputation of violating

the obligation of contracts.' [Citations omitted]

"Of course, the power of a State to modify or affect the obligation of contract is not without limit. '[W]hatever is reserved of state power must be consistent with the fair intent of the constitutional limitation of that power. The reserved power cannot be construed so as to destroy the limitation, nor is the limitation to be construed to destroy the reserved power in its essential aspects. They must be construed in harmony with each other. This principle precludes a construction which would permit the state to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them.'" 85 S. Ct. 581-585, Footnotes omitted, Emphasis supplied.

Following this reasoning is Hooter v. Wilson, 273 So. 2d 516 (La. 1973), by the Louisiana Supreme Court.

C. C. Art. 1968 reads in part:

"[T]he property of the debtor shall be liable for all consequences attending their non-performance; but this right can not be exercised, unless the contract be broken nor until judgment be obtained for the recovery of what is due in consequence of its breach." Emphasis supplied.

[2] Until judgment was rendered in favor of the Bank (which was after the homestead exemption was increased), it had at best only an inchoate and not a vested interest in its debtor's property. The record reflects that the bank's debtor possessed assets including interests in a business and in real estate, in addition to his homestead, at the time the contracts of indebtedness were executed. The Bank had no vested interest in the homestead of its debtor at least until it obtained its judgment and recorded it in the mortgage records, and we are not convinced that the debtor's contract with the Bank was "impaired" by the increase in the homestead exemption.[5] In Wilson, the Louisiana Supreme Court said:

"Even if we were to assume arguendo that the judgment of the creditor against the garnishee is a vested right, the general constitutional principles enunciated in relation to the states' authority to impair

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5. In Daniel v. Thigpen, 194 La. 522, 194 So. 6, (1940), Daniel's property was encumbered by a mortgage which had been recognized and reduced to judgment in 1935. The amount of the homestead was increased from $2,000 to $4,000 in 1938. The court did not allow the increased homestead exemption because it "impaired" the conventional mortgage and the judgment which pre-existed the increase.

contracts would apply. Any right the creditor has acquired is subject to a proper exercise of the police power for legitimate purposes when the exercise of the power is not unreasonable." 273 So. 2d 522. Emphasis supplied.

[3] It is also contended that the result below is a retroactive application of the homestead exemption contrary to Art. 14, Section 26, La. Constitution 1974.[6] The homestead sections of the constitution provide:

"Exemptions From Seizure and Sale. The legislature shall provide by law for exemptions from seizure and sale, as well as waivers of and exclusions from such exemptions. The exemption shall extend to at least fifteen thousand dollars in value of a homestead, as provided by law." Art. 12, Sec. 9.

"Exemption from Seizure and Sale. The provisions of Article XI of the Constitution

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6. This section reads: Except as otherwise specifically provided in this constitution, this constitution shall not be retroactive and shall not create any right or liability which did not exist under the Constitution of 1921 based upon actions or matters occurring prior to the effective date of this constitution."

> of 1921 shall be continued as a statute until the legislature enacts the law required by Article XII, Section 9 of this constitution, but the amount of the exemption shall be fifteen thousand dollars in value until otherwise fixed by law." Art. 14, Sec. 34.

The Constitution became effective before the Bank obtained and recorded its judicial mortgage. The homestead exemption was not a new creation of the 1974 Constitution but was a continuation and mere modification or increase of the existing exemption. We have found that the modification (or increase) does not impair the contracts at issue (the contracts of indebtedness from the debtor to the Bank), but even should our finding be otherwise, we also would find "the economic interests of the State . . . [to] justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts." Simmons, supra, 85 S. Ct. at page 584. The result here does not repudiate the ". . . debts or the destruction of contracts [executed by the debtor to the Bank before the 1974 Constitution] or [deny to the Bank the] the means to enforce them." ibid.

> "When the state changed the remedy by increasing the exemption, it did not agrogate the remedy; it did not make the remedy any less certain than it was at the time of the contract; it simply in the interest of public welfare increased the debtor's exemption so that he and his family might be saved

> from being a charge upon the state." Wilson, supra, 273 So. 2d 522.

The Bank's last argument in brief states that ". . . all of the cases dealing with increases in homestead exemptions have held that the increases have no application to obligations incurred prior to the increase." The debtor's obligation to the Bank before the 1974 Constitution was to pay the indebtedness as contracted, and nothing more. The Bank's judicial mortgage, as it affected the homestead, did not arise until after the increase in the exemption. Our holding does not do violence to the holdings of the cases referred to by the Bank under the respective factual circumstances there present. Those cases were not decided under the circumstances or in light of the authority present here.

At appellant's cost, judgment is

AFFIRMED.

APPENDIX III

THE OUACHITA NATIONAL BANK
IN MONROE

v.

A. L. ROWAN, ET AL

No. 103,465

Fourth Judicial District Court
Parish of Ouachita
State of Louisiana

November 30, 1976

HIGHTOWER, Judge

REASONS FOR JUDGMENT
ON RULE

In this rule, a judgment debtor, Robert L. Rowan, seeks to be paid the amount of his homestead exemption from the proceeds of a judicial sale. It is stipulated that the property sold was his homestead and that the exemption was timely and property asserted. Two issues are presented : (1) Whether Rowan is entitled to claim such an exemption; and (2) , if so, the amount thereof.

In September, 1973, Rowan executed a continuing guaranty securing indebtedness owed Ouachita National Bank by a partnership, A. L. Rowan & Son, and a corporation, A. L. Rowan & Son, General Contractors, Inc.. Later, on December 30, 1974, Rowan also executed a $ 16,203.90 promissory note payable to the Bank. On October 16, 1975, a judgment, based on these instruments, was granted and recorded in favor of the Bank against Rowan and others in the sum of $ 94,928.11, plus interest and attorney's fees. Pursuant to a writ of fieri facias, the homestead was seized on June 4, 1976, and subsequently sold, with benefit of appraisal, for $ 47,000.00 to the judgment creditor.

Article 11, Section 1, of the Louisiana Constitution of 1921, exempts from seizure and sale the homestead of a debtor, except that, if sale of the property under legal process realizes more than $ 4,000.00, the beneficiary is entitled to that amount. Under Section 2 of that article, this exemption does not apply to certain debts, including loans made by building and loan associations on security of homestead property. Section 3 of the article, allows the homestead beneficiary to waive the exemption in writing, by either a general or special waiver. The provisions of Article 11

are continued by the Louisiana Constitution of 1974. See Article 14, Section 34 thereof.

The mortgage certificate issued before the Rowan sale disclosed several encumbrances against the property; however, only three are presently pertinent. The first mortgage in rank was a special mortgage to Monroe Building & Loan Association. This encumbrance secured an unpaid balance of $ 19,646.03 and enjoyed the previously mentioned exclusion from homestead exemption. The second mortgage in priority was a special mortgage containing a homestead waiver and securing an unpaid balance of $ 3,082.02.

The next encumbrance in rank was the judicial mortgage of the bank, the seizing creditor. It enjoyed no homestead waiver.

The bank contends that Rowan's homestead exemption was exhausted in paying the two prior mortgages, which in effect both contained waivers, totaling almost $ 23,000.00; and that, thus, he has no exemption left to assert. Such, however, is not the law.

The waiver, or exclusion of, homestead rights arising in the two prior acts of mortgage was, in each in-

stance, a special waiver for the benefit of the mortgagee and did not inure to the benefit of other creditors. Hardesty v. Warner, 130 La. 735, 58 So. 527 (1912). Out of the proceeds of a judicial sale, mortgages are satisfied according to rank, with the homestead claimant entitled to receive the amount of exemption in preference to a creditor who is without advantage of homestead waiver. Harvey v. Thomas, 239 La. 510, 119 So. 2d 446 (1960); Bank of Erath v. Broussard, 161 La. 657, 109 So. 347 (1926); Consolidated Credit Corp. of Baton Rouge v. Forkner, 219 So. 2d 213 (1st Cir., 1969). The bank's judicial mortgage, enjoying no homestead waiver cannot encroach upon the exemption claimed by Rowan. Accordingly, he is entitled to receive the full amount of his homestead exemption from the sale proceeds in preference to the bank.

We next consider the amount of that exemption, which was increased to $ 15,000.00 by the 1974 Louisiana Constitution, effective at midnight on December 31, 1974.

As stated, the note and guaranty agreement were executed in 1973 and 1974, with judgment being secured and seizure effected in late 1975 and early 1976. Thus, is the amount of the exemption to be controlled by the old constitution

or new constitution? Rowan, of course, claims benefit of the $ 15,000.00 amount.

By the bank, it is urged that application of the increased exemption would be violative of Article I, Section 10 of the United States Constitution, that

"No State shall ... pass any... Law impairing the Obligation of Contract..."

Early jurisprudence of the U. S. Supreme Court reflects state statutes being strictly examined under the Contract clause. However, this interpretation later eroded as exceptions were increasingly made. The conclusion soon prevailed that not every restriction of a contractual arrangement contravenes the federal constitution.

The cases have now "put it beyond question that the prohibition (of the Contract Clause) is not an absolute one and is not to be read with literal exactness like a mathematical formula." Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398, 54 S. Ct. 231 (1934).

In Hooter v. Wilson, 273 So. 2d 516, 521 (La., 1973), Justice Barham, comprehensively reviewing the application of the Contract Clause, states that

today

"Basically, the law applicable to a determination of whether retroactive legislation affecting private contractual rights is such an impairment of contract as to violate the Contract Clause of the United States Constitution is whether the legislation is addressed 'to a legitimate end and the measures taken are reasonable and appropriate to that end.' Home Building & Loan Assn. v. Blaisdell, supra."

Such legislation is now respected as an exercise of the paramount police power of the state to safeguard the vital interests of its people. El Paso v. Simmons, 85 S. Ct. 577, 379 U.S. 497 (1965); East N. Y. Sav. Bank v. Hahn, 66 S. Ct. 69, 326 U.S. 230 (1945); and numerous other cases.

Applying such a standard of purpose and reasonableness, it is readily apparent that the present enactment does no violence to the Contract Clause.

The purpose of the homestead exemption is to leave the financially unfortunate family head with at least some means to provide for his dependents and, thus, to avoid their becoming wards of the state. It is couched in the theory that

the protection of the family is of at least equal importance to the state as the payment of debts. Reymond v. Louisiana Trust & Savings Bank, 177 La. 409, 148 So. 663 (1933); Hammond Bank v. Broderick, 174 La. 693, 154 So. 739 (1934); Engstrom's of Alexandria, Inc. v. Vaughn, 138 So. 2d 672 (3rd Cir., 1962). In today's economy, the sum of $ 4,000.00 will provide little in the way of a home or means of livelihood. Recognizing this financial fact of life, the delegates to Louisiana's Constitutional Convention decided to change the minimum amount of exemption to a more realistic figure. Louisiana electors subsequently ratified that action. Such a measure is a reasonable and appropriate exercise of state authority to protect the economic interests of a citizenry.

The bank also argues that to allow Rowan the $ 15,000.00 exemption would be constitutionally infirm under Article 14, Section 23 of the new state constitution, which provides :

"All ... contracts, obligations, claims, demands, ... existing on the effective date of this constitution shall continue unaffected."

We view the matter differently.

While the debt or obligation owed by Rowan to the Bank arose prior to the new constitution, suit was instituted thereon, judgment secured, and seizure effected subsequent to the effective date of that document. The Bank enjoyed no mortgage affecting the exempt property prior to the judgment on October 16, 1975. So the question presented is whether, by granting the increase of exemption, the existing contract or obligation is "affected" in contravention of Article 14, Section 23.

Execution of a judgment by seizure and sale is only one of a creditor's remedies in the event of contract breach. Thus, the increase in seizure exemption is an alteration, or "affecting", of merely the remedy rather than the obligation of a contract. Plaintiff held no vested contractual obligation that this particular debtor would have property available for future seizure if he failed to otherwise comply with his agreement. For example, Rowan might well have subsequently executed valid additional special mortgages on the homestead and, as a result, none of the subject property would have been available to the Bank for seizure. As stated in Hooter, supra, which, while treating an issue of exemption from garnishment, includes a thorough consideration of exemptions from seizure :

"When the state changed the remedy by increasing the exemption, it did not abrogate the remedy; it did not make the remedy any less certain than it was at the time of the contract; it simply in the interest of public welfare increased the debtor's exemption so that he and his family might be saved from being a charge upon the state."

Rowan's contracts with the Bank were executed to secure payment of the previously mentioned debts. Those contracts contemplated their enforcement, if necessary, by suit and also seizure and sale of any non-exempt property. However, the amounts of exemption from seizure are not fixed and invariable. As previously discussed, the Contract Clause does not constitutionally preclude a state from changing such provisions. Thus, as reasoned in Blaisdell, supra, if existing exemption laws are read into contracts in order to fix obligations between the parties, then the right of the state to change such laws is of necessity read into such contracts. In that view, the existing contract or obligation would encompass the possible increase in exemptions.

The bank maintains that all U.S. Supreme Court cases subsequent to Edwards v. Kearzey, 96 U.S.595 (1878), have recognized the principle that the

remedy is inseparable from the obligation. Such rationale, if followed, might erroneously lead to the conclusion that such a distinction is not now validly applicable to decide questions arising under Article 14, Section 24, Louisiana Constitution of 1974.

While it is true that federal decisions beginning with Blaisdell, supra, have not placed critical reliance on the remedy-obligation distinction in deciding Contract Clause matters, the reason for the modified approach is both clear and important. The Court, by the date of Blaisdell, had concluded that the earlier rule was entirely too narrow in that it had become necessary to uphold the constitutionality of not only laws making changes in remedy but also many which made changes in obligations. Hooter, supra.

Thus, although federal courts are no longer forced to trace the line between "remedy" and "obligation", the distinction remains logically valid and due consideration is afforded it when appropriate. See Honeyman v. Jacobs, 306 U.S. 539, 59 S.Ct. 702 (1938), upholding a statute disallowing certain deficiency judgments which were provided when the contract was made.

We therefore find the present increase in homestead exemption to be remedial and that its being given force here will not "affect", under Article 14, Section 23 of the Louisiana Constitution of 1974, the contract and obligation of the parties.

Neither is the application of the exemption as sought by Rowan violative of Section 26 of the same article of the new constitution, which provides that "...this constitution shall not be retroactive and shall not create any right... which did not exist under the Constitution of 1921....". Under the facts existing, such application is clearly not susceptible to a contention of retroactivity. Further, it does not "create" a homestead right, but merely modifies the previously existing exemption.

We therefore conclude that the debtor, Rowan, is entitled to claim a homestead exemption of $ 15,000.00

Upon presentation, appropriate judgment will be signed in accordance with these reasons.